

APPENDIX A



Premier
& Cabinet

[REDACTED]

23 DEC 2009

Ms Vavaa Mawuli
Senior Solicitor
PIAC
Level 9, 299 Elizabeth Street
Sydney NSW 2000

Dear Ms Mawuli,

Thank you for making a submission in relation to whether [REDACTED] claim to the Aboriginal Trust Fund Repayment Scheme (ATFRS) should be processed under the previous Scheme Guidelines.

I have noted the concerns you raise in your letter about the process for seeking your client's submissions very carefully and I accept that there are limits on your capacity to give legal advice to your client in relation to which set of Guidelines might produce a larger repayment. I recognise that it is conceivable that a different repayment will be made under the new Scheme Guidelines as a result of the changes made by the Government to the ATFRS earlier this year.

A very important public policy object of the ATFRS, however, is to recognise to some extent past injustices suffered by Aboriginal people who were subject to the oversight of Aboriginal welfare boards by providing *ex gratia* payments to as many claimants as possible before the Scheme closes. I have determined, therefore, that to postpone processing your client's claim in order to allow detailed documentary searches to be undertaken to estimate the amount that might have been held in a trust fund is contrary to the public interest and is also likely to be contrary to the individual interests of many claimants affected by the changes.

I also note, however, that under the previous Guidelines, it was possible for a successful claimant to receive a payment in relation to a deceased brother or sister, in limited circumstances. I am advised that it was not possible to make a claim in relation to an aunt or uncle or great-grandparent under the previous Guidelines.

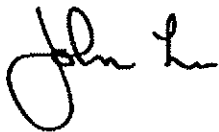
Although I do not consider that the previous Guidelines should apply to your client's claim, I have determined, taking into account the specific matters you have raised in your letter and the overall public interest objectives of the Scheme, that it is in the interests of justice and equity to depart from the current Guidelines and allow your client's claim in relation to their sibling to proceed under them.

In making this determination, I have acted on the understanding that there is no other registered claimant in relation to the trust account-holder and taking into account your advice that your client is unaware of any spouse or direct living descendant of the trust account-holder.

I do not consider that any departure from the Guidelines would be warranted in cases where there is a spouse or eligible direct descendant of a trust account-holder. If it should emerge that a spouse or eligible descendant has, or could have, made a claim in relation to your client's deceased sibling, I am sure that you will understand that the final distribution of any repayment will have to be reconsidered.

Thank you again for writing to me. The ATFRS will be in touch again to advise whether it will be possible to make a repayment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Lee', with a stylized flourish at the end.

John Lee
Director General